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Attorneys for Plaintiff and Counterdefendant  
ELITE SKIN CARE, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ELITE SKIN CARE, LLC,  
a California Limited Liability Company and  
LIZA WONG, an individual,

Plaintiffs,

vs.

SKIN PRO INTERNATIONAL, INC.,  
a Florida Corporation, SOUTH BEACH  
HERBALS, a Florida Corporation and  
TIMOTHY SCHMIDT, an individual,

Defendants.

AND RELATED COUNTERCLAIMS

) Case No. CV 11-00824 EMC

) **PLAINTIFF ELITE SKIN CARE, LLC'S**  
) **REPLY TO COUNTERCLAIMS SET**  
) **FORTH IN DEFENDANTS' ANSWER TO**  
) **FIRST AMENDED COMPLAINT**

) **DEMAND FOR JURY TRIAL**

1 Plaintiff and Counterdefendant Elite Skin Care, LLC ("Elite") hereby submits this reply to the  
2 counterclaims of defendants and counterclaimants Skin Pro International, Inc. ("Skin Pro"), South Beach  
3 Herbals, Inc. ("SBHI") and Timothy Schmidt ("Schmidt") as follows:

4 **Subject Matter Jurisdiction and Venue**

- 5 1. Elite admits the allegations of paragraph 1 of the Counterclaims.  
6 2. Elite admits the allegations of paragraph 2 of the Counterclaims.  
7 3. Elite admits the allegations of paragraph 3 of the Counterclaims.  
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9 **The Parties and Personal Jurisdiction**

10 4. Upon information and belief, Elite admits the allegations of paragraph 4 of the  
11 Counterclaims.

12 5. Elite admits the allegations of paragraph 5 of the Counterclaims.

13 6. Elite submits that the allegations of paragraph 6 of the Counterclaims are inapplicable  
14 and inappropriate because Skin Pro has not complied with Rules 13(h) and 19 of the Federal Rules of  
15 Civil Procedure that govern the addition of a person as a party to a counterclaim.  
16

17 **The Business of Defendant and Counterclaim Plaintiff Skin Pro**

18 7. Elite admits the allegations in paragraph 7 of the Counterclaims.

19 8. Elite admits the allegations in paragraph 8 of the Counterclaims.

20 9. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
21 and every allegation in paragraph 9 of the Counterclaims and on that basis denies each and every  
22 allegation in this paragraph.

23 10. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
24 and every allegation in paragraph 10 of the Counterclaims and on that basis denies each and every  
25 allegation in this paragraph.  
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1           11. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
2 and every allegation in paragraph 11 of the Counterclaims and on that basis denies each and every  
3 allegation in this paragraph.

4           12. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
5 and every allegation in paragraph 12 of the Counterclaims and on that basis denies each and every  
6 allegation in this paragraph.

7           13. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
8 and every allegation in paragraph 13 of the Counterclaims and on that basis denies each and every  
9 allegation in this paragraph.

10           14. Elite lacks knowledge or information sufficient to form a belief about the truth of each  
11 and every allegation in paragraph 14 of the Counterclaims and on that basis denies each and every  
12 allegation in this paragraph.

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14           **The Business of Elite and Counter-Claim Defendants Liza Wong and Elite Skin Care**

15           15. Elite denies the allegations of paragraph 15 of the Counterclaims.

16           16. Elite denies the allegations of paragraph 16 of the Counterclaims.

17           17. Elite admits that its ELITE SKIN CARE products are skin care products, but denies each  
18 and every remaining allegation of paragraph 17 of the Counterclaims.

19           18. Elite denies the allegations of paragraph 18 of the Counterclaims.

20           19. Elite admits the allegations in the first sentence of paragraph 19 of the Counterclaims, but  
21 denies each and every remaining allegation of paragraph 19 of the Counterclaims.

22           20. Elite admits the allegations of paragraph 20 of the Counterclaims.

23           21. Elite admits the allegations of paragraph 21 of the Counterclaims.

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25           **FIRST COUNTERCLAIM**

26           **Infringement of an Unregistered Trademark**

27           22. In response to the allegations contained in paragraph 22 of the Counterclaims, Elite  
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incorporates by reference its responses to paragraphs 1-21 of the Counterclaims as if fully set forth herein.

23. Elite denies the allegations of paragraph 23 of the Counterclaims.

24. Elite admits that it advertises and sells skin care and related cosmetic products under the ELITE SKIN CARE and that Skin Pro's products which are advertised, distributed and sold under the ELITESKIN designation are confusingly similar, but denies each and every remaining allegation of paragraph 24 of the Counterclaims.

25. Elite admits that Skin Pro's use in commerce of the ELITESKIN designation is likely to cause confusion, mistake or to deceive, but otherwise denies the allegations of paragraph 25 of the Counterclaims.

26. Elite denies the allegations of paragraph 26 of the Counterclaims.

27. Elite denies the allegations of paragraph 27 of the Counterclaims.

28. Elite denies the allegations of paragraph 28 of the Counterclaims.

29. Elite denies the allegations of paragraph 29 of the Counterclaims.

30. Elite denies the allegations of paragraph 30 of the Counterclaims.

## SECOND COUNTERCLAIM

### **Declaration False Designation of Origin Under 15 U.S.C. § 1125 (a)**

31. In response to the allegations contained in paragraph 31 of the Counterclaims, Elite incorporates by reference their answers to paragraphs 1-30 of the Counterclaims as if fully set forth herein.

32. Elite denies the allegations in paragraph 32 of the Counterclaims.

33. Elite admits that Skin Pro's use in commerce of the ELITESKIN designation is likely to cause confusion, mistake or to deceive the public that Skin Pro's goods are authorized or approved or are affiliated with Elite, but otherwise denies the allegations of paragraph 33 of the Counterclaims.

34. Elite denies the allegations of paragraph 34 of the Counterclaims.

35. Elite denies the allegations of paragraph 35 of the Counterclaims.

36. Elite denies the allegations of paragraph 36 of the Counterclaims.

37. Elite denies the allegations of paragraph 37 of the Counterclaims.

38. Elite denies the allegations of paragraph 38 of the Counterclaims.

39. Elite denies the allegations of paragraph 39 of the Counterclaims.

40. Elite denies the allegations of paragraph 40 of the Counterclaims.

### **THIRD COUNTERCLAIM**

#### **Violation of California Unfair Competition Law**

41. In response to the allegations contained in paragraph 41 of the Counterclaims, Elite incorporates by reference their answers to paragraphs 1-40 of the Counterclaims as if fully set forth herein.

42. Elite admits the allegations of paragraph 42 of the Counterclaims.

43. Elite denies the allegations of paragraph 43 of the Counterclaims.

44. Elite denies the allegations of paragraph 44 of the Counterclaims.

45. Elite denies the allegations of paragraph 45 of the Counterclaims.

### **FOURTH COUNTERCLAIM**

#### **State Common Law Unfair Competition**

46. In response to the allegations contained in paragraph 46 of the Counterclaims, Elite incorporates by reference their answers to paragraphs 1-45 of the Counterclaims as if fully set forth herein.

47. Elite denies the allegations of paragraph 47 of the Counterclaims.

48. Elite denies the allegations of paragraph 48 of the Counterclaims.

49. Elite denies the allegations of paragraph 49 of the Counterclaims.

50. Elite denies the allegations of paragraph 50 of the Counterclaims.

**FIFTH COUNTERCLAIM**

**Tortious Interference with Prospective Economic Advantage**

51. In response to the allegations contained in paragraph 51 of the Counterclaims, Elite incorporates by reference their answers to paragraphs 1-50 of the Counterclaims as if fully set forth herein.

52. Elite denies the allegations of paragraph 52 of the Counterclaims.

53. Elite denies the allegations of paragraph 53 of the Counterclaims.

54. Elite denies the allegations of paragraph 54 of the Counterclaims.

55. Elite denies the allegations of paragraph 55 of the Counterclaims.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff Elite prays for a judgment against Skin Pro as follows:

A. That Skin Pro takes nothing by reason of its counterclaims;

B. That Skin Pro be enjoined from using the term “EliteSkin” in any combination in connection with the sale of skin care products;

C. That defendant Skin Pro be enjoined from using the domain names <eliteskin.com> and <eliteskin.net> to advertise or sell skin care products or to divert Internet traffic to a web site under a different domain name wherein Skin Pro is advertising and selling skin care products;

D. A judgment affirming the March 16, 2011 NAF panel order transferring the registration of the domain names <eliteskin.com> and <eliteskin.net> to Elite;

E. That defendant Schmidt be ordered to transfer the domain name <eliteskin.com> to Elite;

F. That defendant SBHI be ordered to transfer the domain name <eliteskin.net> to Elite;

G. That Skin Pro be ordered to withdraw its federal trademark application, U.S. Serial No. Serial No. 85/211382 for skin care products;

H. That Elite be awarded Skin Pro’s profits and all damages sustained by Elite by reason of the infringement by Skin Pro and that such damages or profits, whichever is greater, be trebled under 15 U.S.C. § 1117(b) due to the willful and deliberate character of this infringement;

1 I. That this case be declared exceptional and Elite be awarded their costs, expenses and  
2 attorneys fees incurred in connection with this action under 15 U.S.C. § 1117(a);

3 J. For an award of prejudgment interest on the above damages award; and

4 K. That Elite be awarded such further relief as the Court deems just and proper.

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6 Dated: May 9, 2011

DERGOSITS & NOAH LLP

7  
8 By: /s/ Todd A. Noah

9 Todd A. Noah

10 Attorneys for Plaintiff and Counterdefendant

ELITE SKIN CARE, LLC

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12 **JURY DEMAND**

13 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Elite hereby demands a trial by  
14 jury for all issues so triable.

15  
16 Dated: May 9, 2011

DERGOSITS & NOAH LLP

17  
18 By: /s/ Todd A. Noah

19 Todd A. Noah

20 Attorneys for Plaintiff and Counterdefendant

21 ELITE SKIN CARE, LLC  
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